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July 15, 1996

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Mr. William F. Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, NW.  
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Re: *Implementation of the Pay Telephone Reclassification and  
Compensation Provisions of the Telecommunications Act of 1996,*  
CC Docket No., 96-128

Dear Mr. Caton:

Pursuant to the Notice of Proposed Rulemaking in the above captioned matter, enclosed please find an original and fourteen (14) copies of the Reply Comments of American Express Telecommunications Inc. Please date stamp the additional copy and return it with our messenger.

If you have any questions regarding this filing, please do not hesitate to call.

Sincerely,

Janine Goodman

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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of )

Implementation of the Pay Telephone )  
Reclassification and Compensation )  
Provisions of the Telecommunications )  
Act of 1996 )

CC Docket No. 96-128

**REPLY COMMENTS OF  
AMERICAN EXPRESS TELECOMMUNICATIONS, INC.**

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July 15, 1996

## SUMMARY

American Express Telecommunications Inc. ("AETI") supports Sprint Corporation's ("Sprint") recommendation that the Commission first evaluate the current status of Payphone Service Provider ("PSP") compensation to determine whether any additional compensation is warranted, or whether providers are already being fairly compensated, in which case only a revenue-neutral reallocation of compensation is needed. Only if the Commission finds that current compensation is inadequate, should it proceed to assess a per completed call compensation fee. As for the level of the fee, AETI urges the Commission to adopt one of the call compensation proposals recommended by AT&T Corp. ("AT&T"), MCI Telecommunications Corp. ("MCI") or Sprint; these proposals are both rational and equitable.

Moreover, AETI, like many other commenters, believes it essential that the Commission clearly define a "completed call" as only one which reaches the party intended to be called, and that all such completed calls, including incoming calls and directory assistance calls, be included in any compensation scheme.

AETI concurs with comments by AT&T and the RBOC Payphone Coalition which advocate a "carrier pays" regime. AETI believes that the "set use fee" approach will interfere with already-existing subscriber contracts, threaten the very existence of the fledgling prepaid card industry and, in the end, pass costs on to those who are least able to absorb them.

Lastly, AETI shares the Commission's and other commenters' concerns

regarding 800 fraud and other payphone violations, and believes that the penalties suggested by MCI are both reasonable and necessary to deter PSPs from violating the Commission's rules, and exploiting any new compensation mechanisms.

## **TABLE OF CONTENTS**

	<b><u>Page</u></b>
SUMMARY.....	i
I. AS A THRESHOLD MATTER, THE COMMISSION MUST DETERMINE WHETHER PAYPHONE SERVICE PROVIDERS ARE ALREADY BEING FAIRLY COMPENSATED (¶¶ 15-17) .....	2
II. IF THE COMMISSION DETERMINES THAT PSPs MUST RECEIVE ADDITIONAL COMPENSATION, THE COMMISSION SHOULD FIRST CLARIFY WHAT CONSTITUTES A “COMPLETED CALL” AND THEN ADOPT THE COST FRAMEWORKS ADVOCATED BY EITHER AT&T, MCI OR SPRINT (¶¶ 35-40) .....	4
A. In Determining Per Call Compensation Amounts, The Commission Should Include All Completed Non-Revenue Generating Calls In The Aggregate Pool Of Compensable Calls.....	5
B. The Cost Frameworks Outlined By AT&T, MCI And Sprint Are Fair, Rational And Administrable .....	6
III. THE “CARRIER PAYS” APPROACH FAIRLY ALLOCATES THE BURDENS OF PSP COMPENSATION (¶¶ 24-31) .....	8
IV. THE COMMISSION SHOULD ADOPT THE MEASURES RECOMMENDED BY MCI TO DETER 800 FRAUD (¶ 23) .....	10
CONCLUSION .....	11

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CC Docket No. 96-128

**REPLY COMMENTS OF  
AMERICAN EXPRESS TELECOMMUNICATIONS, INC.**

American Express Telecommunications, Inc. ("AETI") hereby submits its reply to comments filed in response to the Commission's *Notice of Proposed Rulemaking*,<sup>1</sup> ("*NPRM*" or "*Notice*") in the above-captioned proceeding. As a provider of prepaid cards and an 800 business subscriber, AETI is extremely concerned about the potential ramifications of a payphone compensation scheme on the prepaid card industry as a whole, as well as on its own prepaid card customers. AETI has reviewed the other parties' comments in this proceeding, and offers the following comments in response thereto

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<sup>1</sup> *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, Notice of Proposed Rulemaking, FCC 96-254 (released June 6, 1996)

I. AS A THRESHOLD MATTER, THE COMMISSION MUST DETERMINE WHETHER PAYPHONE SERVICE PROVIDERS ARE ALREADY BEING FAIRLY COMPENSATED (¶¶ 15-17)

Both the Commission and the majority of commenters begin with the presumption that, with the exception of 0+ calls, PSPs are not currently being fairly compensated. The record, however, contains no persuasive evidence in support of this presumption. Rather, as noted by Sprint, the Commission's NPRM "reflects a "Fire, Ready, Aim" approach."<sup>2</sup> Such an approach invites inequity and possible economic disaster for certain sectors of the telecommunications industry.

Section 276 of the Act mandates that the Commission "establish a per call compensation plan to ensure that all payphone service providers are fairly compensated for each and every completed intrastate and interstate call using their payphone . . . ." In its NPRM, the Commission fails to recognize that both under-compensation and over-compensation constitute unfair PSP compensation. Sprint's concern that Congress's mandate not be transformed into a windfall for PSPs is valid, and, in the case of non-revenue generating calls, well-supported.<sup>3</sup>

AETI agrees with Sprint's conclusion that the American Public Communications Council's ("APCC") decision to freely negotiate the \$.25 per call compensation currently being paid by Sprint and AT&T for dial-around operator services implies that PSPs are already being fairly compensated for non-revenue

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<sup>2</sup> Comments of Sprint Corporation, CC Docket No. 96-128 (filed July 1, 1996) ("Sprint Comments") at 1.

<sup>3</sup> Sprint Comments at 2.

generating calls.<sup>4</sup> Prior to the negotiated agreement, interexchange carriers (IXCs) were already required to compensate Private Payphone Operators (PPO) for dial-around calls at a rate of \$6.00 per phone per month, which was based on an estimated 15 calls per month at \$.40 per call. As argued by Sprint, the private payphone industry had no reason to believe that they would ever be compensated for other non-revenue generating calls, such as subscriber 800 or prepaid card calls.<sup>5</sup> Through its negotiations with the payphone industry, however, AT&T presented PSPs with a unique opportunity to secure a per call rate (as opposed to a fixed monthly rate) that would ensure sufficient compensation. AETI, like Sprint believes it reasonable to conclude from this negotiated arrangement that the APCC, a leading trade organization representing the Private Payphone Owner ("PPO") industry, and its constituency, considered \$.25 per call compensation sufficient to cover all non-revenue compensation. Thus, the more appropriate issue before this Commission should be whether a revenue neutral reallocation of current compensation is warranted, not whether providers, who are already being fairly paid, should be paid more.

Notably, this logic is entirely consistent with the Commission's reasoning in ¶ 16, with respect to 0+ calls. There, the Commission found that a competitively

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<sup>4</sup> In this regard, we note that the number of payphones has proliferated in recent years. This fact suggests that the \$.25 per call compensation paid by AT&T and Sprint fairly compensates the PSPs for their provision of payphone service. If this were not the case, PSPs would not be in a position to expand their operations.

<sup>5</sup> Sprint Comments at 22.



negotiated contract ensures “fair” compensation for PSPs. This same reasoning supports the view that the deal struck between AT&T and Sprint and the PSPs should be considered intrinsically “fair,” whereas any additional compensation for non-revenue calls will constitute double-dipping, which is intrinsically unfair.

To the extent the Commission harbors any doubts, however, AETI urges the Commission to adopt Sprint’s recommendation that the Commission first gather comprehensive data on PSP costs and revenues, and analyze that data to determine what, if any, compensation is warranted, before fixing a compensation rate. For the prepaid card industry, the Commission’s ruling on this issue will have broad effect on business subscribers as well as callers and carriers. The Commission should not blindly support what may be a windfall to one industry to the detriment of others

II. IF THE COMMISSION DETERMINES THAT PSPs MUST RECEIVE ADDITIONAL COMPENSATION, THE COMMISSION SHOULD FIRST CLARIFY WHAT CONSTITUTES A “COMPLETED CALL” AND THEN ADOPT THE COST FRAMEWORKS ADVOCATED BY EITHER AT&T, MCI OR SPRINT (¶¶ 35-40)

Several commenters, including WorldCom, Inc., Telecommunications Resellers Association, and The Competitive Telecommunications Association, agreed that the Commission must first define what constitutes a “completed call” before proceeding with a compensation analysis. AETI concurs, and in addition, believes that the compensation plans already outlined by AT&T, Sprint and MCI are each rational and persuasive.

A. In Determining Per Call Compensation Amounts, The Commission Should Include All Completed Non-Revenue Generating Calls In The Aggregate Pool Of Compensable Calls

Congress mandated "per call compensation . . . for each and every completed intrastate and interstate call" using a PSP's payphone . As many commenters noted, however, the Commission's NPRM fails to properly define a "completed call." In addition, the Commission fails to properly abide by Congress' directive and include all completed calls in its per call compensation scheme.

As to the first issue, AETI agrees with commenters, such as Telecommunications Resellers Association, WorldCom, Inc. and Competitive Telecommunications Association, who define a "completed" call as one which reaches the party intended to receive the call.<sup>6</sup> This definition, which is consistent with several recent Commission decisions, should apply to all calls, including 800 number and prepaid card calls. See, e.g., In the Matter of Teleconnect Co., 10 F.C.C. Rcd. 4 (1995). Thus, where a caller dials an 800 number, and, after connecting with an IXC's switch, inputs the terminating number, the call is not considered "completed" until the caller connects with the called party at the terminating number. The connection at the intermediary platform does not itself constitute a completed call.

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<sup>6</sup> See, e.g., Comments of WorldCom, Inc., CC Docket No. 96-128 (filed July 1, 1996) at 9-10; Comments of Telecommunications Resellers Association, CC Docket No. 96-128 (filed July 1, 1996) at 19-20; Comments of The Competitive Telecommunications Association, CC Docket No. 96-128 (filed July 1, 1996) ("CTA Comments") at 11-13.

Second, in evaluating the amount of per call compensation applicable to non-revenue generating calls, the Commission must include all such calls in its calculations. As argued by the RBOC Coalition, Section 276 of the Act refers to only "completed calls" and does not distinguish between originating and non-originating payphone calls.<sup>7</sup> Thus, there is no reason not to include calls such as incoming calls or directory assistance calls from the per call compensation requirement, and arguably, the Act requires that the Commission do so.

B. The Cost Frameworks Outlined By AT&T, MCI And Sprint Are Fair, Rational And Administrable

Both Sprint and MCI have presented cost studies that place per call compensation for non-revenue generating calls at no greater than \$.083 cents per call and arguably less than \$.0675 per call. These studies are rational, persuasive, and easily implemented, and the Commission should give them significant weight.

The Hatfield study proposed by MCI estimates that costs born by PSPs approximate \$.083 per call, exclusive of 800 calls. Thus, the addition of 800 calls to the aggregate pool of compensable calls should reduce the per call cost accordingly.<sup>8</sup> Notably, the Hatfield study, unlike any of the Commission's

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<sup>7</sup> Comments of the RBOC Payphone Coalition, CC Docket No. 96-128 (filed July 1, 1996) at 5-6.

<sup>8</sup> The Hatfield Study calculated the per call cost by dividing the aggregate cost of providing payphone service by the number of calls, which included local sent paid, 0+, 0- and an estimate of access code calls which was assumed to equal the number of 0+ and 0- calls. The addition of 800 number to the total pool of calls would spread calling costs among a greater number of calls,

proposed surrogates is based on a competitive market model which relies upon an actual costs study performed by New England Telephone Company ("NET") in 1993 to determine the costs NET would incur by providing additional payphones. The Competitive Telecommunications Association cited this study as the "best available evidence in the record of a PSP's marginal cost incurred when its facilities are used to place a compensable call."<sup>9</sup> AETI agrees that this study presents a viable compensation model upon which the Commission can reasonably rely.

The rationale upon which Sprint bases its estimated cost of \$.0675 is equally if not more persuasive than the MCI study, as Sprint relies upon currently accepted rates. As discussed above, Sprint concluded that the APCC's acceptance of a \$.25 per call compensation was indicative of the private payphone industry's belief that \$.25 per call fairly compensates PSPs for not only dial-around calls, but all non-revenue generating calls. Thus, Sprint reasoned that the Commission need not add to the aggregate amount of compensation, but should reallocate that compensation among a larger pool of potential payors. Under this framework, Sprint estimated that, spread across the pool of all non-revenue generating call costs, each per call cost approximates \$.0675 per call.<sup>10</sup> If Sprint were to include incoming calls and directory

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thus reducing the per call rate. The per call rate would be even further reduced with the inclusion of other types of calls, such as directory assistance calls and incoming calls.

<sup>9</sup> CTA Comments at 16.

<sup>10</sup> Applying two studies, Sprint determined that the dial-around calls for which PSPs were currently being compensated represent 27% of all non-revenue generating calls. By multiplying

assistance calls from its aggregate compensation pool, this \$.0675 figure could be reduced significantly.

Finally, as an alternative to the MCI or Sprint studies, AETI believes that the TSLRIC study, advocated by AT&T Corp ("AT&T"), provides the Commission with another solid framework for identifying proper per call compensation. Under the TSLRIC study, PSPs would be paid, on a forward-looking basis, for all costs incurred in making payphones available to carriers. As argued by AT&T, this study is both economically reasonable and beneficial to the public interest: The test eliminates the need to make subjective judgments as to what constitutes "reasonable" compensation because costs would be measured according to objective criteria -- the costs of providing and maintaining a pay phone instrument, the cost of the monthly subscriber line charge, and the costs of other applicable tariffed services. Moreover, the Commission can obtain these costs from reasonably reliable data already accumulated by LECs. Thus, the determination of per call costs should be easily attainable, without undue administrative burden.

### III. THE "CARRIER PAYS" APPROACH FAIRLY ALLOCATES THE BURDENS OF PSP COMPENSATION (¶¶ 24-31)

AETI agrees with the several commenters, such as AT&T and the RBOC Payphone Coalition, who favor a "carrier pays" approach. From a purely

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27% by the rate of \$.25, Sprint determined that each non-revenue call was worth approximately \$.0675 to the PSP.

administrative perspective, "carrier pays" requires the fewest transactions costs, because the carrier can aggregate payments owed to PSPs, rather than bill each end-user, as would be required with the "set-use fee" approach. In addition, as noted by the RBOC Coalition, the "carrier pays" approach most directly ties the beneficiary of the payphone service to its provider. It is the carrier, not the caller and not the end-user, who chooses to rely upon public payphones to make its services available to its customers, rather than augment its own network by erecting its own payphones. It is the carrier who most clearly benefits from all dial-around calls, since the option to "dial around" a payphone provider's presubscribed carrier, provides the outside carrier with a revenue-earning opportunity it would not otherwise have. Thus, it is the carrier who should pay PSPs for these services.<sup>11</sup>

A "set use fee" approach, in contrast, is potentially detrimental to the prepaid card industry. AT&T properly pointed out that, from a practical standpoint, a set use fee phone charge will both discourage and inconvenience callers. In addition, adopting an approach that would allow carriers to impose additional fees on end-users with whom carriers have already negotiated fixed compensation terms is inequitable and violates the notion of a competitive market.

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<sup>11</sup> While it is clear from the NPRM and the Comments that most believe that the IXC is the appropriate carrier to compensate the PSP, there is no reason why local exchange carriers (LEC) should be excluded from the pool of responsible carriers. LECs also profit from the use of payphones both by the coins paid for local service and the access charges paid by IXCs. The LECs, like the IXCs, benefit as an aggregator of transient customers who rely upon payphones for all of their calling needs. In addition, the LECs are in the best position to identify the location from which a call originates.

More importantly, to thrust additional costs on the end-user threatens the very viability of the fledgling pre-paid card industry. Any Commission decision which may lead to the demise, as opposed to the growth, of a new, innovative telecommunications service, contravenes the fundamental pro-competitive principles underlying the Act. For all these reasons, AETI urges the Commission to reject the set-use fee and adopt a carrier pays approach. Regardless of the approach adopted, AETI believes that the FCC should grandfather existing contracts between carriers and business subscribers as well as those prepaid cards already circulating in the market. Only in this way can the Commission protect the value of services already paid for by business subscribers and callers alike.

IV. THE COMMISSION SHOULD ADOPT THE MEASURES  
RECOMMENDED BY MCI TO DETER 800 FRAUD (¶ 23)

Lastly, AETI, like many other commenters, is well-aware that payphone violations are far too common. Only recently, Metro-Tel was cited for numerous violations on 3,400 payphones at the location of the 1996 Summer Olympics in Atlanta.<sup>12</sup> These violations diminish the value of the payphone service for which PSPs are being compensated. It is imperative, therefore, that the Commission be proactive in designing enforcement mechanisms to deter such violations.

In particular, AETI supports MCI's proposal with respect to 800 fraud. According to MCI, local exchange carriers ("LEC") should be able to detect

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<sup>12</sup> See "Independent Pay Phone Operator Loses Contract to Serve Summer Olympics," *Communications Daily*, Vol. 16 No. 132 (July 9, 1996) at 2.

patterns of repeated 800 calling by PSPs who are attempting to illegally boost compensation. MCI therefore recommends an 800 calling reporting requirement for LECs and strict penalties against PSPs who participate in this fraudulent activity. These penalties would include the full refund of all compensation payments received during the time the fraud was perpetuated and a prohibition against future compensation on 800 calls. AETI believes that these types of deterrents will be fair and effective.

### **CONCLUSION**

AETI supports Congress's efforts to ensure "fair compensation" to payphone providers, but is concerned that the proposals raised in the Commission's proposal will lead only to unfair compensation. AETI strongly supports Sprint's position that the Commission must first evaluate the extent to which PSPs are being unfairly compensated before establishing a per call compensation rate. To the extent the Commission does find a per call compensation scheme is merited, AETI urges the Commission to adopt rules that discourage double recovery, and to ensure that PSPs are not compensated at the expense of business subscribers and other customers, whom have



already contracted for telecommunications services, and for whom any additional costs would be detrimental. Any interpretation of Section 276 which otherwise results in a windfall for PSPs is ultimately an unfair one.

Respectfully submitted,

AMERICAN EXPRESS  
TELECOMMUNICATIONS, INC.

BY

A handwritten signature in black ink, appearing to read "James S. Blaszak", is written over a horizontal line.

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Its Attorneys

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## Certificate of Service

I, Jonathan Reiter, hereby certify that true and correct copies of the preceding Reply Comments of American Express Telecommunications Inc. in the Matter of Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128 were served this 15th day of July, 1996 via hand delivery upon the following:

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Jonathan Reiter

July 15, 1996